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FROM: LLOYD W. PELLMAN 
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RE: **California Supreme Court Decision Relating to
Health Care Liens for Medi-Cal Recipients**

This is to advise you that on June 6, 2003, the California Supreme Court issued an opinion in *Olszewski v. Scripps* which prohibits the practice of "substitute" billing by health care providers. Substitute billing occurs in instances where a Medi-Cal patient is treated due to injuries caused by a third party tortfeasor and the health care provider chooses to keep the lien proceeds received from the tortfeasor in lieu of the Medi-Cal payments received from the State.

This practice of substitute billing is permitted under California statute (Welfare and Institutions ["Welf. & Inst."] Code sections 14124.74 and 14124.791). Under those statutes, a health care provider may bill and receive Medi-Cal funds and simultaneously file a lien for the full cost of medical care provided to the injured Medi-Cal beneficiary. If the proceeds from asserting the lien for medical expenses amounts to more than what Medi-Cal had paid, the provider returns the Medi-Cal monies and keeps the lien proceeds, thereby receiving more than what Medi-Cal had paid.

However, federal Medicaid law requires Medicaid providers to accept Medicaid payment as payment in full. In other words, Medicaid providers are prohibited from receiving monies other than the Medicaid payment (with certain patient cost-sharing exceptions). In the *Olszewski* case, the Court ruled that California law conflicted with, and was preempted by, federal law.

Specifically, the Court determined that Welf. & Inst. Code sections 14124.74 and 14124.791 were unconstitutional and that such provider liens were "... invalid, unenforceable, and uncollectible."

The Supreme Court recognized that its decision amounted to a windfall for third party tortfeasors "... at the expense of the innocent health care provider." The tortfeasor escapes liability for the full amount of medical expenses the tortfeasor wrongfully caused, because the injured Medi-Cal beneficiary can only recover the amount that Medi-Cal would pay. The result harms society by forcing health care providers to charge more to all patients or to stop treating Medi-Cal patients. The Court urged the Legislature to remedy the situation in a manner consistent with federal law.

The Los Angeles County Department of Health Services ("DHS") asserts few liens pursuant to Welf. & Inst. Code sections 14124.74 and 14124.791 for Medi-Cal patients injured by third party tortfeasors. Specifically, DHS estimates it currently collects less than \$300,000 annually from asserting liens on Medi-Cal patient recoveries. As such, the impact on revenue from this Court decision will be minimal.

Further, because it receives Disproportionate Share Hospital revenue for Medi-Cal patients in addition to Medi-Cal provider payments, both of which will be retained, DHS is not as adversely affected by this ruling as other health care providers. Moreover, this ruling will not affect DHS' current procedures regarding Medi-Cal application processing or billing.

If you have any questions, please contact Associate County Counsel Irene Riley at 974-1903.

LWP:LAK:ier

c: David E. Janssen
Chief Administrative Officer

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